

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBERS: 95-0148 RO, 95-0100 RO

Responsible Officer — Withholding And Sales Taxes

For Tax Period: 12/31/85 Through 12/31/89

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Responsible Officer — Withholding Tax, Retail Sales Tax

Authority: IC 6-2.5-9-3; IC 6-3-4-8

Taxpayers protest the imposition of responsible officer liabilities on withholding taxes and retail sales taxes not paid.

STATEMENT OF FACTS

Taxpayers' (Husband and Wife) owned and operated a food store which was in business throughout the assessment period. The corporation filed for bankruptcy on November 24, 1987. Taxpayers' operated the business after the conversion into bankruptcy until January 29, 1989 when a Trustee and Agent took control of the operation.

Taxpayers' filed a personal bankruptcy in 1988. The Department has assessed responsible officer liabilities against the taxpayers for withholding and retail sales taxes not paid throughout the assessment period. Taxpayers' protest these assessments. Additional relevant facts will be provided below, as necessary.

I. Responsible Officer — Withholding Tax, Retail Sales Tax

DISCUSSION

Pursuant to Indiana Code Sections 6-2.5-9-3 and 6-3-4-8 there is personal liability of a holder of taxes in trust.

The tax assessments cover the periods 12/31/85 through 12/31/89. Taxpayers' argue they are not responsible for all the withholding tax and retail sales tax assessments. First, taxpayers' claim there is a statute of limitations issue with regard to the assessments. Second, taxpayers' claim there are duplicate assessments. Third, taxpayers' claim they were not responsible for the payment of taxes during the last months of the assessment period. Finally, taxpayers' claim some assessments, known as best information available assessments, are four to five times the prior average amount.

First, taxpayers' claim of a statute of limitations issue regarding these assessments is not supported by any Indiana statute or regulation. As such, this argument fails. Second, the taxpayers' were assessed the same liabilities as each were considered a responsible officer by the Department. The Department requires the assessments to be paid only once.

The taxpayers' third argument is that they were not responsible for the payment of taxes during the period 12/29/89 through 12/31/89. Taxpayers' claim the Bankruptcy Trustee and Agent took over the operation of the business and were responsible for the payment of withholding and retail sales taxes. Taxpayers submit from the Bankruptcy Court the "Contract for Employment of Agent to Manage and Operate Business" dated 12/29/89 which provides in part,

(1) The Debtor's business... shall be operated for a period commencing the date of this order and continuing until the 28th day of February, 1989, unless renewed by both parties or terminated by either party on at least four (4) hours prior notice by telephone...

(8) The Agent shall pay all wages for all the Agent's employees during the period the Agent is responsible for operation of the business as they come due on a current basis and withhold and pay to the proper taxing authorities all required payroll taxes.

As the Trustee and Agent were responsible for the payment of taxes from January 29, 1989 through February 27, 1989, taxpayers are not responsible for this period. Taxpayers also submit copies of letters from the Agent dated October 16, 1989 and July 3, 1993. The October, 1989 letter was the Agent's resignation letter from the position of agent effective October 20, 1989. The July, 1993 letter again states the Agent's term was January 29, 1989 through October 20, 1989. On that date the responsibility for the payment of taxes reverted to the Trustee and her Agent. The July, 1993 letter also states the store was subsequently sold by the Trustee.

Finally, taxpayers' argue several of the Department's assessments are four to five times the average, reasonable amount due from taxpayers. However, upon investigating the history behind the Department's assessments it was shown most of the assessments against the taxpayers were based upon a "no remittance" return. Taxpayers submitted a return without the proper remittance. The amounts of the liabilities were taken from the return submitted by the taxpayers. Those few liabilities assessed as "best information available" were not substantially more than the "no remittance" liabilities.

FINDING

Taxpayers' protest is sustained in part and denied in part. Taxpayers are not responsible officers for the retail sales and withholding taxes due from 12/29/89 through the end of the assessment period. Taxpayers are responsible officers for all other liabilities as currently stated by the Department.